

RESOLUTION NO. SA-12-11

RESOLUTION OF THE IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY DETERMINING, PURSUANT TO CALIFORNIA HEALTH AND SAFETY CODE SECTION 34176(g)(1)(b)-(2), THAT THE HOUSING AUTHORITY'S DESIGNATIONS OF THE USE AND COMMITMENT OF CERTAIN PROCEEDS DERIVED FROM HOUSING BONDS ISSUED PRIOR TO JANUARY 1, 2011 FOR PURPOSES OF AFFORDABLE HOUSING ARE CONSISTENT WITH THE HOUSING BONDS COVENANT OBLIGATIONS, INCLUDING REQUIREMENTS RELATING TO TAX STATUS, AND THAT THERE ARE SUFFICIENT HOUSING BONDS PROCEEDS AVAILABLE FOR THE DESIGNATED PURPOSES

WHEREAS, the Imperial Beach Redevelopment Agency ("Redevelopment Agency") was a redevelopment agency in the City of Imperial Beach ("City"), duly created pursuant to the California Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the California Health and Safety Code ("Health and Safety Code")) ("Redevelopment Law"); and

WHEREAS, the City Council has adopted redevelopment plans for Imperial Beach's redevelopment project areas, and from time to time, the City Council has amended such redevelopment plans; and

WHEREAS, Sections 33334.2 and 33334.3 of the Redevelopment Law required the Redevelopment Agency to deposit into its Low and Moderate Income Housing Fund not less than twenty percent (20%) of taxes allocated to the Redevelopment Agency pursuant to Section 33670 of the Redevelopment Law for the purposes of increasing, improving, and preserving the community's supply of low and moderate income housing; and

WHEREAS, certain Tax Allocation Revenue Bonds, 2003 Series A (Palm Avenue/Commercial Redevelopment Project) ("Housing Bonds") were issued pursuant to an Indenture Trust, dated as of November 1, 2003, by and among the Imperial Beach Public Financing Authority, the Redevelopment Agency and Wells Fargo Bank, National Association, as trustee, backed by the Low and Moderate Income Housing Fund, to provide money for loans by the Redevelopment Agency for the purposes of increasing, improving, and preserving the community's supply of low and moderate income housing; and

WHEREAS, AB x1 26 ("AB 26") and AB x1 27 ("AB 27") were signed by the Governor of California on June 28, 2011, making certain changes to the Redevelopment Law and the Health and Safety Code, including adding Part 1.8 (commencing with Section 34161) and Part 1.85 (commencing with Section 34170) ("Part 1.85") to Division 24 of the Health and Safety Code; and

WHEREAS, the California Redevelopment Association and League of California Cities filed a lawsuit in the Supreme Court of California (*California Redevelopment Association, et al. v. Matosantos, et al.*, Case No. S194861) alleging that AB 26 and AB 27 were unconstitutional; and

WHEREAS, on December 29, 2011, the Supreme Court issued its opinion in the *Matosantos* case largely upholding as constitutional AB 26, invalidating as unconstitutional AB 27, and holding that AB 26 may be severed from AB 27 and enforced independently; and

WHEREAS, the Supreme Court generally reformed and revised the effective dates and deadlines for performance of obligations under Health and Safety Code Part 1.85 of AB 26 arising before May 1, 2012 to take effect four months later, while leaving the effective dates or deadlines for performance of obligations under Health and Safety Code Part 1.8 of AB 26 unchanged; and

WHEREAS, as a result of the Supreme Court's decision, and on February 1, 2012, all California redevelopment agencies were dissolved, successor agencies were established as successor agencies to the former redevelopment agencies pursuant to Health and Safety Code Section 34173 of AB 26, and successor agencies are tasked with paying, performing and enforcing the enforceable obligations of the former redevelopment agencies and winding down the affairs of the former redevelopment agencies; and

WHEREAS, the City Council of the City adopted Resolution No. 2012-7136 on January 5, 2012, pursuant to Part 1.85 of AB 26, electing for the City to serve as the successor agency to the Redevelopment Agency upon the dissolution of the Redevelopment Agency under AB 26 ("Successor Agency"); and

WHEREAS, the City Council of the City adopted Resolution No. 2012-7137 on January 5, 2012, pursuant to Part 1.85 of AB 26, designating the City of Imperial Beach Housing Authority ("Housing Authority") to serve as the successor housing entity ("Successor Housing Entity") upon the dissolution of the Redevelopment Agency on February 1, 2012 and to receive the dissolved Redevelopment Agency's housing assets, rights, powers, duties, obligations, liabilities and functions previously performed by the Redevelopment Agency upon its dissolution, including enforcement of affordability covenants and performance of related activities pursuant to applicable provisions of the Community Redevelopment Law (Part 1, commencing with Section 33000), including, but not limited to, Section 33418; and

WHEREAS, the Housing Authority adopted Resolution No. HA-12-06 on January 5, 2012 accepting the transfer of the housing assets, rights, powers, duties, obligations, liabilities and functions previously performed by the Redevelopment Agency upon its dissolution; and

WHEREAS, as part of the FY 2012-2013 State budget package, on June 27, 2012, the Legislature passed and the Governor signed Assembly Bill No. 1484 ("AB 1484", Chapter 26, Statutes 2012). Although the primary purpose of AB 1484 is to make technical and substantive amendments to AB 26 based on issues that have arisen in the implementation of AB 26, AB 1484 imposes additional statutory provisions relating to the activities and obligations of successor agencies and to the wind down process of former redevelopment agencies; and

WHEREAS, there exists \$913,000 of available proceeds derived from the Housing Bonds ("Excess Housing Bonds Proceeds") to be expended in accordance with the Housing Bonds covenants, including requirements relating to tax status; and

WHEREAS, pursuant to Health and Safety Code Section 34176(g)(1)(A) of AB 26 as amended by AB 1484, the Housing Authority may designate the use of and commit the Excess Housing Bonds Proceeds in a manner that is consistent with the Housing Bonds covenants, including requirements relating to tax status; and

WHEREAS, in accordance with Health and Safety Code Section 34176(g)(1)(B) of AB 26 as amended by AB 1484, the Housing Authority provided written notice to the Successor Agency designating the use of and commitment of the Excess Housing Bonds Proceeds in the amounts set forth below for the following affordable housing projects (collectively, "Affordable Housing Projects"):

- a. Approximately \$380,000 toward that certain Clean & Green Program, including a proportionate amount for project administration costs, which Program provides grants to very low, low and moderate-income single-family homeowners to improve energy and water efficiency and

health and safety conditions; and

- b. Approximately \$533,000 in financial assistance to Habitat for Humanity, including a proportionate amount for project administration costs, for the acquisition and development of six (6) semi-detached for-sale houses located at 776 10th Donax in the City of Imperial Beach, California for ownership by low-income households ("Habitat Project"); and

WHEREAS, the Housing Authority's designation of the use and commitment of the Excess Housing Bonds Proceeds toward the Affordable Housing Projects and in the amounts provided above is consistent with Item #44 and Item #45 listed on the Recognized Obligation Payment Schedule for the period January 1, 2012 through June 30, 2012 as previously approved by the Successor Agency, the Oversight Board and the Department of Finance and deemed valid and effective under AB 26 as amended by AB 1484; and

WHEREAS, pursuant to Health and Safety Code Section 34176(g)(1)(B) of AB 26 as amended by AB 1484, review of the Housing Authority's designations of the use and commitment of the Excess Housing Bonds Proceeds by the Successor Agency, the Oversight Board and the Department of Finance shall be limited to a determination that the Housing Authority's designations of the use and commitment of such proceeds are consistent with the Housing Bonds covenant obligations, including requirements relating to tax status, and that there are sufficient Excess Housing Bonds Proceeds available for the designated purposes; and

WHEREAS, pursuant to Health and Safety Code Section 34176(g)(2) of AB 26 as amended by AB 1484, the Successor Agency shall retain and expend the Excess Housing Bonds Proceeds at the discretion of the Housing Authority provided that the Successor Agency ensures that the proceeds are expended in a manner consistent with the Housing Bonds covenants, including requirements relating to tax status of the Housing Bonds, and within the amount of Excess Housing Bonds Proceeds available for such purposes. The Excess Housing Bonds Proceeds shall be used and committed in a manner consistent with the purposes of the Low and Moderate Income Housing Asset Fund, established by the Housing Authority pursuant to AB 1484, and such expenditures shall be listed separately on the Recognized Obligation Payment Schedule submitted by the Successor Agency; and

WHEREAS, this Resolution has been reviewed with respect to applicability of the California Environmental Quality Act ("CEQA"), the State CEQA Guidelines (California Code of Regulations, Title 14, Sections 15000 *et seq.*, hereafter the "Guidelines"), and the City's environmental guidelines; and

WHEREAS, this Resolution is not a "project" for purposes of CEQA, as that term is defined by Guidelines Section 15378, because this Resolution is an organizational or administrative activity that will not result in a direct or indirect physical change in the environment, per Section 15378(b)(5) of the Guidelines; and

WHEREAS, all of the prerequisites with respect to the approval of this Resolution have been met.

NOW, THEREFORE, BE IT RESOLVED by the Imperial Beach Redevelopment Agency Successor Agency, as follows:

Section 1. The foregoing recitals are true and correct and are a substantive part of this Resolution.

- Section 2.** The adoption of this Resolution is not intended to and shall not constitute a waiver by the Successor Agency of any rights that the Successor Agency may have to challenge the effectiveness and/or legality of all or any portion of AB X1 26 or AB 1484 through administrative or judicial proceedings.
- Section 3.** The Successor Agency determines that the Housing Authority's designations of the use and commitment of the Excess Housing Bonds Proceeds toward the Affordable Housing Projects and in the amounts proposed in this Resolution are consistent with the Housing Bonds covenant obligations, including requirements relating to tax status, and that there are sufficient Excess Housing Bonds Proceeds available for the designated purposes.
- Section 4.** The Successor Agency determines that this Resolution is not a "project" for purposes of CEQA, as that term is defined by Guidelines Section 15378, because this Resolution is an organizational or administrative activity that will not result in a direct or indirect physical change in the environment, per Section 15378(b)(5) of the Guidelines.
- Section 5.** The Executive Director, or designee, is hereby authorized and directed to: (i) accept, retain and expend the Excess Housing Bonds Proceeds at the discretion of the Housing Authority in accordance with this Resolution and pursuant to Health and Safety Code Section 34176(g)(2) of AB 26 as amended by AB 1484 and (ii) take such other actions and execute such other documents as are necessary to effectuate the intent of this Resolution and to comply with Health and Safety Code Section 34176(g) on behalf of the Successor Agency.
- Section 6.** This Resolution shall take effect upon the date of its adoption.

PASSED, APPROVED, AND ADOPTED by the Imperial Beach Redevelopment Agency Successor Agency at its meeting held on the 1st day of August 2012, by the following vote:

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| AYES: | BOARD MEMBERS: | BILBRAY, KING, BRAGG, SPRIGGS, JANNEY |
| NOES: | BOARD MEMBERS: | NONE |
| ABSENT: | BOARD MEMBERS: | NONE |

_____/s/
JAMES C. JANNEY
CHAIRPERSON

ATTEST:

_____/s/
JACQUELINE M. HALD, MMC
SECRETARY